IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 841 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDULAL HARILAL MODI

Versus

NARANBHAI RAMJIBHAI

Appearance:

MR GD BHATT for Petitioners

MR VC DESAI for Respondent No. 1

NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 18/07/2000

ORAL JUDGEMENT

1. This is a revision application u/s 29[2] of the Bombay Rent Act at the instance of the original defendants - tenants, who were sued by the respondents landlords for a decree of eviction under the provisions

of the Bombay Rent Act.

2. The plaintiffs - landlords had sued the tenants for a decree of eviction on the ground that the tenants were in arrears of rent of more than six months and were not ready and willing to pay the rent, that the tenants had acquired suitable alternative accommodation, that the landlords required the suit premises for their personal bonafide requirements, and that the premises leased to the tenants were not put to the use for which they were rented out for a period of six months prior to the date of the statutory notice.

3. The trial Court after appreciating the evidentiary material on record, recorded findings of fact that the tenant was in arrears of rent on the date of the statutory notice, but that he had deposited the due amount in Court and therefore, no decree for eviction could be passed on this ground. The trial Court found against the landlords and in favour of the tenants by holding that the landlords had failed to prove that the tenants had acquired suitable alternative accommodation. The trial Court also found that although the landlords required the suit premises for their personal bonafide requirement, to pass a decree for eviction would result in greater hardship to the tenants, than refusing a decree for eviction. The trial Court therefore refused to pass a decree for eviction on this ground. The trial Court also found against the landlords in holding that the landlords had failed to establish that the rented premises were not used for the purpose for which they were let for a period of six months prior to the suit notice. On this findings, the trial Court dismissed the suit of the landlords.

4. The landlords therefore preferred an appeal before the lower appellate court. The lower appellate Court found against the landlords and confirmed the findings of fact of the trial Court in respect of suitable alternative accommodation, greater hardship to the tenants, and as regards non user of the leased premises.

4.1 However, on a total re-appreciation of the evidence on record, and on a correct interpretation and application of the law in relation to section 12[3][b] of the Rent Act, the lower appellate Court found that the tenant was not regular in depositing the rent during the course of appeal. The lower appellate Court therefore found that the tenant had lost the protection of section 12[3][b] of the Rent Act, and therefore, passed a decree

of eviction against the tenants. Hence, the present revision by the original defendants - tenants.

5. Learned counsel for the petitioners - tenants submitted that, at certain point of time during the pendency of the appeal namely on 26th November 1984, the entire amount due till that date namely Rs.1,275/- was deposited in the Court. In view of this fact and in view of the special circumstances sought to be made out by the tenants, learned counsel submitted that the provisions of section 12[3][b] may not apply to the facts of the case with all severity.

6. I am unable to accept this submission of the learned counsel for the tenants. The short facts relevant on this point, which are not in dispute are to the effect that although the tenants were served with the notice of appeal, they chose not to appear in the appeal for quite sometime. Learned counsel for the appellants landlords had already completed his arguments in appeal, and at this point of time, the respondents tenants appeared in the appeal. At this stage, written arguments were filed at exh.12 in the appeal and oral submissions were also made. The respondents in appeal [tenants] also filed one pursis exh.10, wherein it is stated that they have deposited Rs.1,275/- on 26th November 1984, being the entire rent due till that day. Obviously therefore, there is an implied admission in the pursis exh.10, which is even otherwise obvious from the records and proceedings of the lower appellate Court, that from the date of service of the notice of appeal upon the tenants upto 26th November 1984, not a single paise was deposited in the appeal. Obviously therefore, since the tenants had not deposited the rent in the appeal on a regular basis, they have lost the protection of section 12[3][b] of the Rent Act.

6.1 Learned counsel for the petitioners - tenants submitted that there are special circumstances which require to be taken into account. He submitted that when the tenants were served with the notice of appeal, it was lost by them through oversight or mistake, that the tenants had contacted the learned advocate of the landlords, and they were told that they would be informed as and when the appeal was placed on board for hearing. It was therefore submitted that the defendants tenants relied upon the advocate of the plaintiffs - landlords, and therefore, did not take any steps in the appeal.

6.2 Firstly, the lower appellate Court was completely justified in holding that when the tenants have succeeded

in the suit, and were aware that the landlords had filed an appeal, such tenants would not, as reasonably prudent persons, rely upon the oral assurance of the learned advocate for the landlords.

6.3 Another discrepancy comes to the forefront when we note that it was merely by way of the respondents' argument before the lower appellate Court that the tenants submitted that they relied upon the word of the learned advocate for the landlords. However, on a perusal of the original pursis exh.10, we find that the averments made therein are different. Exh.10 states that the tenants relied upon the word of the plaintiffs as regards further progress of the appeal etc. This may appear to be a minor controversy, but is significant in only one aspect namely, that the submissions made before the lower appellate Court on behalf of the tenants were of a nature of an improvement brought about by the learned advocate for the tenants, so as to possibly improve the case of the tenants, beyond the averments made in exh.10.

6.4 Further more, another aspect requires to be noted. Exh.10 is merely a pursis. A pursis is merely an unilateral submission made by a party to the Court, and is not binding to the other side nor is it evidence. The averments and submissions made in the said pursis could easily have been in the form of an affidavit or supported by an affidavit, inasmuch as the tenants were represented by an advocate in the appeal. However, this is not done. Obviously therefore, the averments made in the pursis cannot be treated as evidence, and were therefore rightly rejected by the lower appellate Court.

7. Learned counsel for the petitioners - tenants seek to rely upon a decision of the Supreme court in the case of Nomanbhai Taiyabali Kokawala v/s Safiyabai Taiyabali in Civil Appeal No. 2926 of 1979 decided on 12th October 1979. According to the learned counsel, the Supreme court has in the said decision held that, in order to bring home the full force of section 12[3][b], so as to deprive the tenant of the benefit of the said provision, there should be further a mental element, and the negative stance of the tenant, that is to say that he is not ready and willing to pay. This negative fact has to be made good by the landlord.

7.1 No doubt, the decision referred by the learned counsel for the tenants does contain the aforesaid language. That however does not mean that it is the ratio of the decision. The short judgement in question

makes it clear that the only question considered was "only a short point as to whether there is a wilful default in payment of arrears of rent" on the part of the tenant, and requires a mental element, or perhaps even a negative stance of the tenant. On the other hand, it is a well settled position in law, covered by a number of Supreme Court decisions, that since an appeal is an extension of the suit, the tenant in order to avail of the protection of section 12[3][b] of the Rent Act, must continue to regularly deposit the rent due during the pendency of the appeal. This requirement is a statutory requirement and is dehors any mental element whatsoever. As the Supreme Court has held in a number of decisions, section 12[3][b] imposes certain conditions upon the tenant, which are in the nature of obligations, which the tenant must strictly meet in order that he continues to avail of the protection of the said provision. If he does not meet the requirement of this statute, he loses the protection of the statute and a decree for eviction must follow. In this context, the mental element has no part to play.

7.2 Even otherwise, on a further consideration of the Supreme Court decision referred to by learned counsel for the tenants, the said decision is a decision entirely on the facts of the case. In the said decision, the Supreme Court has observed as under :-

> "So far as we are able to see from the facts, the tenant was ready and willing to pay the arrears of rent, but he made a mis-calculation on the assumption that the standard rent was Rs.13/- and not Rs.22/- per mensem. On his realisation in the appellate Court that it was Rs.22/- that was the unit of rent, he offered to make good the balance and eventually did."

I must also take note of the special facts before the Supreme Court in the aforesaid decision whereby although the appeal of the tenant was allowed, it was the tenant who was directed to pay Rs.2,000/- by way of costs to the respondent - landlord.

8. I am therefore of the opinion that the said decision referred to by the learned counsel for the petitioners is entirely on the facts of the case and has no application to the present case.

9. This revision is therefore without any substance and is required to be dismissed. Rule is discharged with

costs. Interim relief stands vacated.

10. At this stage, learned counsel for the petitioners - tenants requests for extension of the interim relief on the ground that the tenants may desire to approach the Supreme Court. On this specific request, the interim relief operating in the Civil Revision Application is extended upto 18th of September 2000, on which day, it shall expire ipso facto without any further orders.

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